IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. application No. 719 of 2005

Dr.Madhu Khanduri
W/o Late Suresh Kumar Khanduri
Khanduri Ultrasound Center
6/1 New Road Dehradun Petitioner

versus

1 State of Uttaranchal through
Secretary Health Department.
Dehradun.
2 Chief Medical Officer, Dehradun
3 Mrs. Naseena Fatima Kazmi,
President of Ashra, The Helping
Hand r/o 75, Rajpur Road, Thana Dalanwala,
District, Dehradun.
4 Smt. Farjana c/o Dr. Nassreen Fatima Kazmi
R/o 75, Rajpur road,
5 Seema Bhatia member of Mahila Ayog r/o 75
Rajpur road, Thana Dalanwala,
District Dehradun.

Opposite party

Hon'ble B.C. Kandpal, J.

This is an application under Section 482 Criminal procedure Code filed by petitioner Dr. Madhu Khanduri for quashing the criminal proceedings in criminal case No. 1622 of 2005 under Section 28(1) (a) of Pre-natal Diagnostic Technique (Regulation & Prevention of Misuse) Act 1994.

The facts giving rise to this petition are that a criminal complaint was filed by the Chief Medical Officer, Dehradun before the court of Chief Judicial Magistrate, Dehradun.

After the perusal of the complaint and hearing the learned counsel for the complainant the learned Chief Judicial Magistrate came to the conclusion that there was a prime facie case to proceed

against the petitioner, hence passed an order summoning the petitioner.

The petitioner has challenged the summoning order as well as the proceedings of the complaint case by way of this petition.

Heard Sh. Vinod Sharma, learned counsel for the petitioner, learned AGA and perused the record.

The learned counsel for the petitioner has argued that the complaint is based on false, concocted and manipulated allegations. It has also been submitted that the opposite party No. 3 to 5 were not legally authorised for the purpose of alleged raid made by them in Ultra Sound Centre according to law. It has also been submitted that opposite party No. 3 to 5 have not evidence about the determination of sex received from Khanduri Ultra sound Centre belonging to the petitioner.

I do not find any force in the arguments advanced by the learned counsel for the petitioner. The contention raised by the petitioner relates to the question of facts which can only be assessed and seen by the trial court.

I do not find any serious mis-carriage of justice and abuse of process of the court. I also do not find that any mandatory provisions of law has not been complied with.

The petitioner by way of raising contention before me wants a pre-mature decision in a case where the entire facts are extremely incomplete and hazy. More so, when the evidence has not been collected and produced before the court and the issues involved cannot be seen in their true perspective without sufficient material.

I am not supposed to assume the role of the trial court and embark upon the inquiry as to the reliability of evidence and sustainability of accusation on reasonable appreciation of such evidence.

There is no material to show that the complaint is malafide, frivolous or vexatious.

I am therefore of the view that the proceedings pending before the court of Chief Judicial Magistrate, Dehradun is not to be quashed.

The petition lacks merit and is liable to be dismissed.

Accordingly the petition is dismissed in limine.

However, in case, the petitioner files objections before the trial court against the summoning order, the trial court shall decide the same in accordance with law.

(B.C. Kandpal,J)

19.10.2005
nbj